

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AMERICAN EMPLOYERS' INSURANCE	:	
COMPANY, as subrogee of College Book	:	
Stores of America	:	
One Beacon Street	:	
Boston, MA 02108	:	
Plaintiff,	:	C.A. No. 05-063-SLR
v.	:	
T.A. RIETDORF & SONS, INC.	:	
P.O. Box 1528	:	
Wilmington, DE 19899	:	
Defendant.	:	

**PLAINTIFF'S RESPONSE IN OPPOSITION TO
DEFENDANT T.A. RIETDORF'S & SONS, INC.'S MOTION TO DISMISS**

Plaintiff, American Employers' Insurance Company, as subrogee of College Bookstores of America ("Plaintiff") respectfully files this Response In Opposition To Defendant T.A. Rietdorf & Sons, Inc.'s ("Defendant" or "T.A. Rietdorf") Motion to Dismiss. In support thereof, plaintiff avers as follows:

1. On March 26, 2004, Plaintiff filed an Amended Complaint against United Dominion Industries, *et al.*, in the United States District Court for the District of Delaware (C.A. No. 04-178-SLR). Plaintiff's Amended Complaint as attached hereto as Exhibit "A."
2. On or about June 18, 2004, United Dominion Industries, Inc. filed a Third Party Complaint against T.A. Rietdorf & Sons raising substantially the same claims raised in Plaintiff's Complaint. United Dominion Industries, Inc.'s Third Party Complaint is attached hereto as Exhibit "B."
3. On August 4, 2004, this Court entered its Scheduling Order. The Court's Scheduling Order is attached hereto as Exhibit "C."

4. On February 4, 2005, Plaintiff filed a Complaint against T.A. Rietdorf and served it on February 7, 2005. (D.I. 1, 3).

5. When the Complaint was filed, Plaintiff specifically identified it as related to case No. 04-178-SLR so that the Court would exercise jurisdiction over both matters. Plaintiff's counsel advised T.A. Rietdorf's counsel of their intention of having the matters consolidated. Plaintiff's Civil Sheet Appendix B attached hereto as Exhibit "D."

6. Plaintiff intends to move to consolidate the Complaint with the related matter before this Court when T.A. Rietdorf answers the Complaint.

7. To date, the parties, including T.A. Rietdorf, have deposed eight (8) fact witnesses, have exchanged its expert disclosures (disclosures are due May 31, 2005) and reports pursuant to Rule 26(a)(2) and have exchanged and answered discovery from both defendants T.A. Rietdorf and United Dominion Industries, Inc.

8. The parties have agreed to mediate these matters on June 30, 2005.

9. Trial in the related matter is scheduled on October 3, 2005. *See* Scheduling Order attached hereto as Exhibit "C."

10. When Rietdorf answers plaintiff's Complaint, plaintiff will respectfully request that the Complaint be consolidated with the related matter for trial.

11. Plaintiff's Complaint will not require any additional discovery and, once consolidated, can be tried with the related action without delay.

12. Plaintiff's Complaint will not delay the disposition of the related matters and does not raise any new claim against T.A. Rietdorf nor is T.A. Rietdorf prejudiced, in fact, disposition of Plaintiff's Complaint will insure a full and final disposition of the matter.

WHEREFORE, for the reasons set forth herein and in the accompanying Memorandum of Law, Plaintiff respectfully requests that this Court deny Defendant's Motion to Dismiss.

Dated: May 31, 2005

David A. Felice

Sean J. Bellew (#4072)
David A. Felice (#4090)
Chase Manhattan Centre
1201 North Market Street, Suite 1400
Wilmington DE 19801
Telephone: (302) 295-2000
Facsimile: (302) 295-2013
Attorneys for Plaintiff

Of Counsel:

Peter G. Rossi, Esquire
Cozen O'Connor
1900 Market Street
Philadelphia, PA 19103
Telephone: (215) 665-2783
Facsimile: (215) 665-2013